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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 William W. McClellan,

11 Petitioner,

No. CIV S 01-0847 DFL PAN P

12 vs.

13 Suzan Hubbard, et al.,

14 Respondent.

ORDER

15 \_\_\_\_\_/  
16 Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of  
17 this court's September 26, 2005, denial of his application for a writ of habeas corpus.<sup>1</sup> Before  
18 petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c);  
19 Fed. R. App. P. 22(b).


20 A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the  
21 applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C.  
22 § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues  
23 satisfy the required showing or must state the reasons why such a certificate should not issue.  
24 Fed. R. App. P. 22(b).

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26 <sup>1</sup> Petitioner submits evidence his notice of appeal was submitted to prison officials for mailing before the  
deadline expired, therefore the court deems the notice of appeal timely under the prisoner “mailbox” rule.

1 For the reasons set forth in the magistrate judge's April 15, 2005, findings and  
2 recommendations, petitioner has not made a substantial showing of the denial of a constitutional  
3 right. Accordingly, a certificate of appealability should not issue in this action.

4 IT IS SO ORDERED.

5 DATED: 6/9/2006

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9 DAVID F. LEVI  
United States District Judge